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H.C.P.No.177 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.177 of 2023

Usha
W/o.Arumugam

.. Petitioner/
mother of the detenu

Vs.

1. The Government of Tamil Nadu
Rep. By its Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai Police
Vepery, Chennai-08
3. The Superintendent
Central Prison
Puzhal
Chennai – 600 066
4. The Inspector of Police,
L & O, E-4 Abiramapuram Police Station
Chennai

..Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, calling for records relating to the proceedings of the 2nd respondent in BCDFGISSSV No.468 of 2022 dated 13.12.2022 against the petitioner's son Manikandan @ Vaandu Mani, male, aged about 27, son of Arumugam and quash the same and consequently direct the respondents herein to produce the detenu who is detained under Tamil Nadu Act 14 of 1982 currently confined in Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner	:	Mr.S.Senthilvel for Mr.G.Pandian
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 07.02.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this



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Court on 30.01.2023 inter alia assailing a detention order dated 13.12.2022 bearing BCDFGISSSV No.468/2022 made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, fourth respondent is the Sponsoring Authority.

2. Mother of the detenu is the petitioner.

3. Mr.G.Pandian, learned counsel on record for habeas corpus petitioner is before us. Learned counsel for petitioner submits that ground case qua the detenu is for alleged offence under Section 302 IPC in Crime No.444 of 2022 on the file of E-4 Abiramapuram Police Station.

4. The aforementioned detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic Page No.1/3 <https://www.mhc.tn.gov.in/judis> H.C.P.No.177 of 2023 offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

5. The detention order has been assailed inter alia on the grounds that the bail applications and bail orders in respect of adverse cases have not been furnished to the detenu, some of the pages in the booklet furnished to the detenu are not legible and there is a delay in considering the representation of the petitioner.



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6. Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.

7. Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'

2. The aforementioned order made in the 07.02.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.

3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.444 of 2022 on the file of E-4, Abiramapuram Police Station for alleged offences under Section 302 of IPC. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

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5. At the time of admission board, the points that bail applications and bail orders in respect of adverse cases have not been furnished to the detenu, some of the pages in the booklet furnished to the detenu are not legible and there is a delay in considering the representation of the petitioner were urged but in the final hearing today, learned counsel posited his argument on the point that subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail is impaired. In this regard, learned counsel drew our attention to relevant portion of paragraph 4 of grounds of detention and the same reads as follows:

'4.....Further, in a similar case, registered at R-3 Ashok Nagar Police Station Cr.No.59/2021, u/s.147, 148, 449, 324 and 302 IPC, the bail was granted to the accused Thiru Balaji by the Court of Principal Sessions, Chennai in Crl.M.P.No.10485 of 2021....'

6. As regards Balaji's case, the bail order is dated 26.05.2021 and the same has been furnished to the detenu as part of the grounds booklet. We had the benefit of perusing the grounds booklet and paragraph 5 of the bail order of learned Sessions Judge reads as follows:



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'5. The petitioners have been in custody for the past 75 days.

No previous case reported as against the petitioners. Considering the duration of custody and stage of the case and existing Covid-19 situation, this Court is inclined to grant bail to the petitioners subject to condition.'

7. The above speaks for itself. To put it differently, bail has been granted in Balaji's case *inter alia* owing to then obtaining / prevailing Covid-19 situation and also because there was no previous case in Balaji's case. Both these facets are not available both in the adverse case and in the ground case in the impugned preventive detention order now on hand. The reason is, Covid -19 situation in legal parlance is from 15.03.2020 to 28.02.2022 i.e., the period for which Hon'ble Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 *inter alia* extended time across the Board. The impugned preventive detention order itself talks about one adverse case and one ground case and therefore, this is not a solitary case as in Balaji's case. Owing to these two reasons, Balaji's case and the case on hand are not really comparable. To put it differently, the two cases are dissimilar. As Detaining Authority has compared two dissimilar cases to arrive at subjective satisfaction qua imminent possibility of detenu being enlarged on



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bail, subjective satisfaction arrived at by the Detaining Authority in this regard is impaired, which in turn means that the impugned preventive detention order deserves to be dislodged.

8. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 13.12.2022 bearing reference BCDFGISSSV No.468/2022 made by the second respondent is set aside and the detenu Thiru.Manikandan @ Vaandu Mani, aged 27 years, son of Thiru.Arumugam, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.)

(R.S.V.,J.)

30.06.2023

Index : Yes
Speaking order
Neutral Citation : Yes
gpa

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal



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To

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1. The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat,
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai Police
Vepery, Chennai-08
3. The Superintendent
Central Prison
Puzhal
Chennai – 600 066
4. The Inspector of Police,
L & O, E-4 Abiramapuram Police Station
Chennai
5. The Public Prosecutor
High Court, Madras.



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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